IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2784 of 2006
TO
FIRST APPEAL No. 2792 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
RANCHHODBHAI BIJALJI THAKORE - Defendant(s)

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Appearance :

FIRST APPEAL NOS. 2784 to 2786 of 2006
MS KRINA P CALLA, AGP, for Appellants
MR AJ PATEL for Defendant
FIRST APPEAL NOS. 2787 to 2789 of 2006
MS TANUJA KACCHCHI, AGP, for Appellants
MR AJ PATEL for Defendant
FIRST APPEAL NOS. 2790 to 2792 of 2006
MR KD PANDYA, AGP, for Appellants
MR AJ PATEL for Defendant

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 01/12/2006

ORAL JUDGMENT

(Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated May 13, 2005 rendered by the learned Assistant Judge and Special Judge (L.A.R.), Ahmedabad (Rural) at Ahmedabad in Land Acquisition Case Nos. 11/99 to 17/99 and 19/99 to 20/99, by which the claimants have been awarded additional compensation at the rate of Rs. 25.30 paise per Sq.Mtr. for their acquired lands, over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.3.75 paise per Sq.Mtr. for all the lands by his award dated February 06, 1998.

2. The Executive Engineer, Narmada Yojana, Division No.16, Mehsana, proposed to the State Government to acquire the lands of Village – Bamroli, Taluka–Viramgam, District-Ahmedabad for the public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of Village–Bamroli were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued which was published in the Official Gazette on July 05, 1996. The land owners whose lands were proposed to be acquired, were thereafter served with the notices. They opposed the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of Village – Bamroli which were specified in the Notification published under Section 4 of the Act were needed for the public purpose of construction of the Narmada Canal. Therefore, a declaration under Section 6 of the Act was made which was published in

the Official Gazette on December 03, 1996. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 50/- per Sq.Mtr.. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.3.75 paise per Sq.Mtr. for all the lands by his award dated February 06, 1998. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad which were registered as Land Acquisition Case Nos. 11/99 to 17/99 and 19/99 to 20/99.

3. Though the Reference Court in Paragraph 7 of the impugned award has mentioned that witness Baldevji Tasaji had tendered evidence on behalf of the claimants at Exhibit – 24, the record shows that on behalf of the claimants witness Rannchodji Bijali Patel, at whose instance the Land Acquisition Case No. 11/99 was registered, was examined at Exhibit – 24, on behalf of the claimants. The said witness mentioned in his testimony that the lands acquired were highly fertile and that the claimants were able to raise crops of Cummin Seeds, Cotton, Jovar, Til, Millet, Wheat etc. According to the said witness, each claimant was earning net income of Rs. 35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces. After stating that Village-Bamroli was fully developed, it was claimed by the said witness that Kadi-Katosan, Bamroli-Balsaman, Bamroli-Dhodhalpur, Bamroli-Chalasan and Bamroli-Dangarva roads were passing through Village-Bamroli. The witness stated that the railway station was situated at a distance of 2 K.M. from the lands acquired and that the lands of the Village-Bamroli were similar in all respects to the lands of

Villages-Dangarva and Madrisana. The witness produced the previous award of the Reference Court relating to the lands of Village-Madrisana at Exhibit – 23 in support of the claim for enhanced compensation made by the claimants. In order to substantiate his claim that the lands acquired in the instant case were highly fertile and that the claimants were able to raise different crops thereon, the witness produced 7/12 extracts relating to the lands acquired at Exhibits – 15 to 22. This witness was cross-examined on behalf of the appellants. The record shows that the witness was subjected to lengthy cross-examination by the learned Counsel for the appellants, but nothing substantial could be elicited nor the assertion made by him that the lands of Village-Bamroli and the lands of Village-Madrisana were similar in all respects could be demonstrated to be untrue.

4. On behalf of the appellants, witness Ghanshyamdas Omprakash Gupta, who was then Deputy Executive Engineer was examined at Exhibit-30. The said witness mentioned before the Court that the

Special Land Acquisition Officer had determined the market value of the lands acquired on the basis of the awards rendered by the Courts. According to this witness no reliable evidence was adduced by the claimants before the Special Land Acquisition Officer in support of their claim that they should be awarded the compensation at the rate of Rs.50/- per Sq.Mtr. and, therefore, the Special Land Acquisition Officer was justified in making the impugned award. In his cross-examination by the learned Counsel for the claimants, the witness mentioned that he was personally not knowing anything about the acquisition proceedings initiated in the instant case. What is relevant to notice is that, this witness never claimed that the lands of Village-Bamroli which were acquired in the instant case and the lands of Village-Madrisana which were previously acquired were not similar.

5. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village-Madrisana was a

relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court held that the claimants would be entitled to get additional compensation at the rate of Rs.25.10 paise per Sq.Mtr. However, without assigning any reason whatsoever, in the ultimate analysis, the Reference Court held that the claimants were entitled to the additional compensation at the rate of Rs.25.30 paise per Sq.Mtr by the impugned award, giving rise to the above numbered appeals.

6. This Court has heard Ms. Krina P.Calla, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned Counsel for the claimant/claimants. This Court has also considered the paper-book supplied by the learned Counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though the witness for the claimants could

not make good his assertion that each claimant was earning Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces, there is no manner of doubt that the lands acquired in the instant case were fertile and that each claimant was able to raise different crops thereon. The fact that the claimants were able to raise different crops stands established by the contents of 7/12 extracts produced by witness Baldevji Tasaji at Exhibits-15 to 22. However, the record does not show that the claimants had claimed enhanced compensation on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous award of the Reference Court relating to the lands of village-Madirsana. The said award was produced at Exhibit-23. A perusal of the Exhibit-23, makes it clear that the lands of Village-Madrisana, Taluka-Viramgam, District-Ahmedabad were acquired for the public purpose of construction of Narmada canal pursuant to the publication of Notification under Section 4 of the Act in the Official Gazette on June 20, 1995. Therein the Special Land Acquisition

Officer had offered compensation to the claimants at the rate of Rs.2.10 per Sq.Mtr. by his award dated September 30, 1996. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Reference Nos. 721/98 to 724/98. In the said case, witness Manibhai Motidas Patel was examined by the claimants to prove their case that they were entitled to enhanced compensation. On appreciation of the evidence, the Reference Court by judgment and award dated August 31, 2004 had awarded additional compensation to the claimants at the rate of Rs.23/- per Sq.Mtr. Thus the perusal of Exhibit-34 establishes that the claimants whose lands were acquired from Village-Madrisana were paid compensation in all at the rate of Rs.25.10 per Sq.Mtr. As noticed earlier, the assertion made by witness Baldevji Tasaji examined on behalf of the claimants that the lands of Village-Madrisana were near to the lands acquired in the instant case and that the lands previously acquired from village-Madrisana were similar in all respects to the lands

acquired in the instant case, could not be proved to be untrue.

8. Therefore, this Court is of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to the lands of village-Madrisana for the purpose of determining market value of the lands acquired in the instant case.

9. Ms. Krina P.Calla, learned Assistant Government Pleader, has produced a simple copy of judgment delivered by the High Court in First Appeal Nos. 2314/2006 to 2322/2006 on October 30, 2006 for perusal of the Court. It indicates that the award of the Reference Court rendered in Land Acquisition Case Nos. 721/98 to 724/98 relating to the lands of village-Madrisana was challenged by the acquiring bodies before the High Court in the above numbered appeals and the High Court by judgment dated October 30, 2006 held that the claimants whose lands were acquired from Village-Madrisana were entitled to compensation at the rate of Rs.25/- per Sq.Mtr and

not at the rate of Rs.25.10 paise, as held by the Reference Court. Thus, on the basis of re-appreciation of evidence adduced by the parties, this Court is of the opinion that the claimants would be entitled to additional amount of compensation at the rate of Rs.25/- per Sq.Mtr. and not at the rate of Rs.25.30 paise per Sq.Mtr. as held by the Reference Court. Apart from the mistake committed by the Reference Court in calculating the rate at which the additional amount of compensation would be payable to the claimants, this Court finds that correct findings of fact have been recorded by the Reference Court on appreciation of the evidence. It is well settled that the previous award of the Reference Court relating to a village, which has attained finality, can be treated as a good piece of evidence and relied upon for the purpose of assessing market value of similar lands acquired from the adjoining village. Therefore, this Court is of the opinion that the basis adopted by the Reference Court for determining the market value of the lands acquired in the instant case cannot be said to be erroneous, so as to warrant interference of this Court in the instant appeals.

10. This Court further finds that the lands of village-Madrisana were acquired for the public purpose of construction of Narmada Canal pursuant to the Notification under Section 4 of the Act published in the Official Gazette on June 20, 1995 whereas in the instant case, Notification for acquiring the lands of Village-Bamroli was published under Section 4 of the Act on July 05, 1996 and in view of the time gap of about one year, the claimants would be entitled to benefit of rise in price of the lands at the rate of 10 percent per annum. It is argued between the learned Counsels for the parties that if the amount of compensation is calculated on this basis, the claimants would be entitled to the compensation at the rate of Rs. 27.50 paise per Sq.Mtr for irrigated lands as well as non-irrigated lands. Therefore, to this extent, the Appeals will have to be accepted in part.

11. For the foregoing reasons, the Appeals partly succeed. The judgment and award dated May 13, 2005, rendered by the learned Assistant Judge and Special Judge (L.A.R.), Ahmedabad (Rural) at

Ahmedabad in Land Acquisition Case Nos. 11/99 to 17/99 and 19/99 to 20/99, awarding compensation to the claimants at the rate of Rs.29.05 paise per Sq.Mtr. for all the lands is hereby modified and it is held that the claimants in all would be entitled to get compensation at the rate of Rs.27.50 per Sq.Mtr. The other benefits granted to the claimants in the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated above. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT.ABHILASHA KUMARI, J.]

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